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IN THE

Supreme Court of the United States

October Term, 1951

No. [redacted] 93

MARGARET TRIMBLE REVEDIN,
Petitioner,

against

DEAN G. ACHESON, Secretary of State of the United States, and UNITED STATES TRUST COMPANY OF NEW YORK,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT

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against

DEAN G. ACHESON, Secretary of State of the United States, and UNITED STATES TRUST COMPANY OF NEW YORK,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, MARGARET TRIMBLE REVEDIN, respectfully prays for a writ of certiorari to the Court of Appeals for the Second Circuit to review a judgment, entered February 8, 1952 (rehearing denied March 5, 1952) affirming a decision of the District Court for the Southern District of New York, which held that your petitioner had expatriated herself under the laws of the United States.

Summary Statement of Matters Involved

The instant case is, with one basic exception, on its facts so similar to another case that has recently come before this Court, *Savorgnan* v. *United States,* 338 U. S. 491, 70 S. Ct. 292, 94 L. Ed. 287 (1950), as to be almost its identical twin.

In view of these similarities, the District Court and the Court of Appeals in the instant case felt impelled to reach a result similar to that reached by this Court in the *Savorgnan* case. They did so, however, without reference to the basic distinction between the two cases. They thereby reached conclusions which are contrary to the weight of authority, and thus, it is submitted, unjustly deprived petitioner of her citizenship in the land of her birth.

The similarities between these two cases are striking. Both are actions under 8 U. S. C. A. §903 for a judgment declaring the petitioner to be a citizen of the United States. The petitioner in each case a native born American girl became engaged to a member of the Italian Diplomatic Corps. In each case, the marriage was temporarily blocked (in the instant case for over four years) by the then Italian dictate that no member of its Diplomatic Corps could marry anyone other than an Italian citizen. In each case, for the purpose of getting around this technicality, an Italian decree was issued granting the petitioner Italian citizenship conditional upon her thereafter taking an oath of allegiance to the Italian state. In each case, thereafter, the petitioner accompanied by her fiancé, went to an Italian Consulate in this country (in one case in Chicago, and in the other in New York) and there performed similar acts and signed similar documents in

Italian, none of which were understood by or explained to the petitioner in either case. The document, signed by petitioner in each case recited that she had on that day taken an oath of allegiance to the King of Italy. Neither petitioner had, however, actually taken any such oath, nor had either in signing the document or otherwise any intention of renouncing or in any way endangering her American citizenship. Marriage followed shortly after the trip to the Italian Consulate in each case.

The distinction between these two cases is, however, we believe, fundamental. In the *Savorgnan* case, the petitioner on the trial *conceded* the fact (as foreign law is a fact in our Courts) that what she did at the Italian Consulate was sufficient as a matter of Italian law to constitute the required oath of allegiance to the Italian King, and conceded that she had thereby acquired Italian nationality. The petitioner, in the instant case, however, denied both these facts in her pleadings, and, through the uncontradicted testimony of an expert on Italian law whose qualifications as such were conceded by the government, established that what she did at the Italian Consulate was *not* sufficient as a matter of Italian law to constitute the oath necessary to accord her Italian nationality, but was a nullity, and that she therefore did not thereby acquire such nationality or any other status under the Italian law.

In the *Savorgnan* case, the government urged that Mrs. Savorgnan had lost her citizenship: (1) by foreign naturalization; and (2) by taking an oath of allegiance to a foreign state.[1] As already indicated, petitioner in that

[1] The government in the *Savorgnan* case urged that plaintiff had lost her nationality either under the Citizenship Act of 1907, §2 which provided in part as follows: "§2. That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws or when he has taken an oath of allegiance to any foreign

case conceded the foreign naturalization. She contended, however, that expatriation did not result as she had not intended to expatriate herself. This was the principal, and, outside of certain fringe questions, not material in the instant case, of foreign residence and place of naturalization, the sole question presented to this Court for decision in the *Savorgnan* case. On this point, this Court held:

> "The petitioner's principal contention is that she did not intend to give up her American citizenship, although she applied for and accepted Italian citizenship, and that her intent should prevail. However, the acts upon which the statutes expressly condition the consent of our Government to the expatriation of its citizens are stated objectively. There is no suggestion in the statutory language that the effect of the specified overt acts, when voluntarily done, is conditioned upon the undisclosed intent of the person doing them" (pp. 499-500).

In the instant case, too, the government contended that petitioner had expatriated herself: (1) by foreign naturalization; and (2) by taking an oath of allegiance to a foreign state. The trial of the instant case was held almost a year prior to the decision of this Court in the *Savorgnan* case, and decision was reserved pending the determination of that appeal. Following Your Honors' decision in the *Savorgnan* case, the District Court held against the petitioner in the instant case, placing its decision on the first ground, *viz.*: that petitioner had by her acts acquired foreign naturalization. In reaching that conclusion, the

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state."; or the Nationality Act of 1940, §401, which reads in part as follows: "A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by: (a) Obtaining naturalization in a foreign state * * * (b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state; * * *." It is the 1907 Act, which, in our view, is applicable in the instant case.

District Court apparently felt that the testimony adverted to above on the Italian law was superseded by Your Honors' decision in the *Savorgnan* case, as it explained its conclusion as follows:

> "Mrs. Savorgnan and plaintiff here adopted and went through the same procedure. If it resulted in Italian citizenship in the one case, it certainly should here" (R., p. 349).

The District Court in so ruling, it is submitted, clearly misread Your Honors' decision in the *Savorgnan* case, for no Court in that case found that the procedure adopted and gone through by the petitioner there resulted in Italian naturalization. Apparently the Court of Appeals in the instant case recognized this error in the decision below as it made no mention of foreign naturalization, but found rather that petitioner had been expatriated on the second ground, viz. that she had taken an oath of allegiance to a foreign state.

Plaintiff contended below that what she did was insufficient to constitute a legally valid oath for the purpose of acquisition of foreign nationality; but, said the Court of Appeals:

> "But the requirement of a legally valid oath for purposes of gaining citizenship is not to be imported into the statutory provisions dealing with its loss. The statutory provision itself is not so qualified" (p. 483).

It is this central holding of the Court of Appeals that we believe should be reviewed by this Court.

Briefly, we believe, in conflict with the expressed views of the Court of Appeals in the instant case, that the legislature in prescribing an oath of allegiance to a foreign state as an act of involuntary expatriation must have

intended that word as expressing a legal rather than a factual concept; that is to say, must have had in mind some act of some legal consequence, and not simply a disrespectful or disloyal word or gesture. Indeed, if it be assumed that the legislature intended the latter, we believe that the Act so construed would clearly be unconstitutional.

Jurisdiction to Review

The jurisdiction of the Court is invoked under Section 1254 (1) of the United States Code, Title 28, Judiciary and Judicial Procedure, and Section 903 of the said Code, Title 8, Aliens and Nationality.

Opinions Below

The Judgment of the United States Court of Appeals for the Second Circuit is dated February 8, 1952, and its opinion is reported in 194 Fed. 2d 482. A petition for rehearing was denied by the said Court on March 5, 1952.

The opinion of the District Court for the Southern District of New York is printed in full in the record (Tr. pp. 109-120).

Questions Presented

(1) Whether the legislature in prescribing oaths of allegiance as acts of involuntary expatriation intended to include anything other than legally valid oaths of allegiance.

(2) If so, whether the legislation, as so construed, is constitutional.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

I

The decision below is in conflict with the decision of another Circuit Court of Appeals on the same matter.

On February 14, 1939, petitioner in the instant case went to the Italian Consulate in New York, and there, in the presence of her fiancé and at the request of an Italian official, held up her hand while certain words in Italian which she did not understand and which were not translated or otherwise explained to her were spoken to her,[2] (Tr. fols. 124-126, 238, 386) and she thereupon signed a document in the Italian language which also was not translated or otherwise explained to her (Tr. fols. 161-162, 237-238, 386). She then left the Italian Consulate. When asked on the trial what she thought she was doing in raising her hand, she answered:

> "I assumed that I was supposed to be taking an oath" (Tr. fol. 134).

And when asked whether she raised her hand intending to take an oath, she replied:

> "I wasn't interested in this procedure in any way, shape or manner" (Tr. fol. 135).

These acts were all performed by plaintiff on the understanding and belief that she was not renouncing or in any way endangering her American citizenship.

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[2] There was no competent evidence presented on the trial as to what was actually said to Mrs. Revedin while her hand was raised. The document she signed thereafter recited (in Italian) that she herself had pronounced the words of an oath to the King of Italy. It is presumably on the basis of that document that the Court below reached the conclusion that the Italian official recited the words of such an oath to her. But that document was clearly not competent evidence of the fact—as its contents were not known to petitioner, it could not be considered an admission by her, and it was clearly hearsay as a statement of the Italian officials.

It was established on the trial by the uncontroverted testimony of Luigi Dionisi, a member of the Italian bar, and by Plaintiff's Exhibits 6 (Tr. p. 87), 7 (Tr. p. 90), and 8 (Tr. p. 91), that these acts under Italian law were a nullity in that: (1) they were not preceded by the warnings required by the Italian law for all oaths (Tr. fols. 194, 202-213); in that (2) the words of the oath were not spoken by the taker—an absolute requirement of Italian law (Tr. fols. 193-202, 206-213); and in that (3) no sworn interpreter was present for the administration of the oath as is also required by the Italian law where the taker does not speak the language (Tr. fols. 213-214, 222-226).

It is also clear that such acts would not have been sufficient under our own law to constitute a legally valid oath for any purpose for which the validity of an oath has ever been passed on by our Courts. For example:

A. Prosecution for perjury:

O'Reilly v. *People of the State of New York*, 86 N. Y. 154 (1881);

People ex rel. Greene v. *Swasey*, 122 Misc. 388, 203 N. Y. S. 22 (Sup. Ct. Albany Co. 1924).

B. Suit for statutory fees for taking "oaths":

Bookman v. *City of New York*, 200 N. Y. 53 (1910).

C. Suit to revoke naturalization as a United States citizen on the ground of an invalid oath of allegiance:

Knauer v. *United States*, 328 U. S. 654, 66 S. Ct. 1304, 90 L. Ed. 1500 (1946);

Baumgartner v. *United States*, 322 U. S. 665, 64 S. Ct. 1202, 88 L. Ed. 1525 (1943);

United States v. *Wurzenberger*, 56 F. Supp. 381 (D. Conn. 1944).

D. Whether a criminal complaint was made under oath:

Spangler v. *District Court of Salt Lake County*, 104 Utah 584, 140 P. 2d 755 (1943).

E. Whether witness's testimony was made under oath so that a judgment could be founded upon it:

Milmoe v. *Meyer*, 15 N. Y. S. 2d 899 (Madison Co. Ct. 1939).

F. Whether a teacher had taken the oath required to validate her contract of employment:

June v. *School District*, 283 Mich. 533, 278 N. W. 676 (1938).

The Court below, however, in spite of the fact that the "oath" here was legally invalid as a step in acquiring foreign nationality, or for that matter for any other purpose, held it sufficient to effect involuntary expatriation.

The Court in so ruling was squarely in conflict with the decision of the Court of Appeals for the District of Columbia in the case of *Gillars* v. *United States*, 182 Fed. 2d 962 (1950). The appellant in that case, Mildred Elizabeth Gillars (better known as "Axis Sally") was convicted in the District Court for treason based on her broadcasts from Berlin to the American forces during World War II. Miss Gillars contended, among other things, that she could not be guilty of treason as she had, on the day following Pearl Harbor and before our official declaration of war, signed and submitted a written oath of allegiance to Germany, which translated stated in effect: "I swear allegiance to Germany"; which counsel argued resulted in Miss Gillars' expatriation under the statute here in-

volved. The trial court held against Miss Gillars' contention refusing even to submit the question to the jury. The Court of Appeals affirmed on the ground that there was no showing that what she did was a legally effectual act. On this point, the Court said:

> "Nevertheless, if what she did cut the bonds of citizenship or raised a question to be decided by the jury her inconsistent claims of citizenship did not preclude her from defending on the basis of its loss if such basis existed. There is no indication, however, that the paper which she said she signed was intended as a renunciation of citizenship; there is no testimony whatever that it was sworn to before anyone authorized to administer an oath or indeed before anyone at all; its exact content is uncertain; if it be treated as an affirmation or declaration rather than an oath it is informal rather than formal in character; and there is no connection whatever shown between it and any regulation or procedure having to do with citizenship or attaching oneself to the Reich or to Hitler. These circumstances preclude attributing to it the character of such an oath or affirmation or other formal declaration as the statute requires to bring about expatriation" (p. 983).[8]

The decision of the Court below is also in conflict with the oft-quoted decision of The Board of Immigration Appeals, *In the Matter of E,* 1 I.&N. Decisions 548 (1943). In that case, E, a native born American, moved to Canada while an infant and later applied for enlistment in the militia. In connection with such application, he executed an "attestation card" bearing an oath to Great Britain. In later exclusion proceedings, he testi-

[8] Compare the language of the Court of Appeals in the instant case in decreeing the involuntary expatriation of a native born citizen as follows: "Plaintiff asserts, and we agree, that American citizenship is an extraordinarily precious thing. But we would suppose that one realizing this would not enter lightly into foreign language oaths and document signing, no matter how 'informal and frivolous,' without seriously seeking information and guidance" (p. 484).

fied that though he signed the card, he did not take the oath. The Board of Immigration Appeals ordered E's admission as a United States citizen, stating:

> "[The Canadian] statute requires that two things be done, that the oath be taken and that it be subscribed to. The appellant did subscribe to the form of this oath, but there is nothing in this record to indicate that he took the oath. To constitute a valid 'oath', there must be in the presence of the person authorized to administer it, an unequivocal act whereby the affiant consciously takes upon himself the obligation of an oath. * * * We feel that the act of the appellant in signing the form of oath is not taking an oath of allegiance within the meaning of section 2 of the Act of March 2, 1907" (p. 550).

II

The decision below is in conflict with the position taken by the government and with this Court's decision in the *Savorgnan* case.

The government in its brief before Your Honors in the *Savorgnan* case did not question the soundness of the decision of The Board of Immigration Appeals *In the Matter of E, supra.* Rather it sought to distinguish the *Savorgnan* case as follows (at p. 48 of its brief):

> "As for the minor claim that certain formalities were lacking in the taking of the oath, the fact is that the document, regular on its face, was duly signed before the witnesses whose signatures appear thereon, and that no formalities were required under Italian law. The Board of Immigration Appeals case which petitioner cites rests on the fact that under Canadian law the oath had to be formally taken, as well as subscribed to in writing, and the American citizen

> there involved subscribed to the oath but never formally took it. In the Matter of E—, 1 I.&N. Decisions 548, 550. There is no showing of a similar Italian requirement, and there was no finding that lack of formality nullified the oath."

But such distinction would not apply to the instant case, for here there was a "showing of a similar Italian requirement" from which a finding "that lack of formality nullified the oath" must necessarily follow.

Nor do we read anything in Your Honors' opinion in the *Savorgnan* case in any way inconsistent with this view expressed by the government. In describing the facts of that case, Your Honors stated, at p. 494:

> "No ceremony of formal administration of the oath accompanied her signature *and apparently none was required.*" (Emphasis ours.)

And no other mention of the "oath" was made in the body of the opinion. In the footnote to the opinion, Your Honors stated:

> "5. The Government further claims that the petitioner's signing of the instrument containing her oath of allegiance to the King of Italy was an oath of allegiance to a foreign state within the meanings of §2 of the Act of 1907, and of §401 (b) of the Act of 1940. We agree."

In the light of the above background, it would seem obvious that in that footnote, all that Your Honors were saying was that an oath of allegiance to a foreign state, however informally taken, if (as admitted in that case) effective under the laws of such foreign state in the acquisition of foreign nationality, would likewise be sufficient under the American law for the purpose of expatriation—a proposition with which, of course, it would be impossible to quarrel.

III

In the alternative, the decision below has decided an important question of federal law which has not been, but should be, settled by this Court.

Assuming we are in error in our reading of Your Honors' opinion in the *Savorgnan* case, then the instant case presents a new and basic question of constitutional law which, because of its importance to all of our citizens, should be resolved by this Court.

As pointed out above, the Court of Appeals in this case has held that what petitioner did constituted an "oath of allegiance" within the meaning of the statute in a factual sense regardless of its legal inconsequence.

While it is well settled that Congress has the power to enact legislation dealing with the expatriation of native born citizens, *MacKenzie* v. *Hare,* 239 U. S. 299, 49 S. Ct. 305, 73 L. Ed. 706 (1915), it is equally well settled that American citizenship is clothed with those same constitutional protections that guard our lesser personal and property rights; that legislation decreeing involuntary expatriation cannot be unreasonable, arbitrary or capricious; and that it must bear a "reasonable and substantial relation to the object sought to be obtained". *Lapides* v. *Clark,* 176 F. 2d 619 (D. C. Cir. 1949), cert. den. 338 U. S. 860.

Acquiring nationality in a foreign state with its resulting dual nationality and consequent divided loyalty would, of course, clearly meet this test of constitutionality. So it may be assumed would the taking of a legally valid and binding oath of allegiance to a foreign state because of the obligations inconsistent with American citizenship that would thereby be incurred. Beyond this, however, we do

not believe the legislature intended to or could constitutionally go.

Cut loose from the test of legal validity, we find ourselves in a large sea of possible but undefined factual situations, in which no one can safely chart a course, and which can best be described as a sea of disrespectful or disloyal words or gestures. It cannot be believed that the legislature intended to decree expatriation for such actions alone. It cannot be believed, if it did so intend, that this Court would uphold such legislation.

Consider an act of the legislature fixing a six months jail sentence as the penalty for such disloyal word or gesture with nothing more. Clearly no court in this land would uphold such an act. See *Schenck* v. *United States,* 249 U. S. 47, 63 L. Ed. 470, 39 S. Ct. 247; *Dennis* v. *United States,* 341 U. S. 494, 95 L. Ed. 1137, 71 S. Ct. 857. See also *Baumgartner* v. *United States, supra.* Consider how much more punitive to deprive one of her American citizenship for life for such an offense.

And, yet, that is exactly what the Court below has done to this petitioner.

It is true, as pointed out by the Court below, that petitioner here may have been somewhat careless of her rights. It may also be true that what petitioner here did could fairly be described as a disrespectful act, although the record is clear that no disrespect or disloyalty was intended. But that is all that can be said against the petitioner. She did not, by such acts, acquire any foreign nationality, or incur any other obligation to any foreign state, or in any other way encumber her loyalty to the land of her birth.

The propriety of imposing such an awful penalty as expatriation upon a native born citizen for such minor and ill defined conduct, it is most respectfully submitted, de-

serves review by this Court not only in the interest of this petitioner, but in the general public interest as well.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of this Court, directed to the Court of Appeals for the Second Circuit, commanding that court to certify and send to this Court a full and complete transcript of the record and of all proceedings in this case, to the end that said cause may be reviewed and determined by this Court; that the judgment of said Court of Appeals entered in said cause be reversed; and that your petitioner be granted such other and further relief as to this Honorable Court may seem just and proper.

Dated, May 28, 1952.

Respectfully submitted,

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3 Hackworth, *Digest of International Law* (1942) 16

In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 93

MARGARET TRIMBLE REVEDIN, *Petitioner*

v.

DEAN G. ACHESON, Secretary of State of the United States, and UNITED STATES TRUST COMPANY OF NEW YORK

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

BRIEF FOR RESPONDENT, DEAN G. ACHESON, IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 109-120) and its memorandum opinion (R. 131) reaffirming its earlier opinion after reargument are unreported. The opinion of the Court of Appeals (R. 141-145) is reported at 194 F. 2d 482.

JURISDICTION

The judgment of the Court of Appeals was entered on February 8, 1952 (R. 145), and a petition for a rehearing was denied on March 5, 1952 (R. 160). The petition for a writ of certiorari was filed on May 31, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the fact that there may have been irregularities in the administration of an oath given in the process of Italian naturalization establishes that petitioner was not naturalized in a foreign state, where petitioner was treated by the Italian government as a national of that country.

2. Whether the oath of allegiance to a foreign state—the taking of which is a separate ground for loss of United States nationality under the Nationality Act—must be an oath valid for acquisition of foreign nationality.

STATUTES INVOLVED

Section 2, Citizenship Act of 1907, 34 Stat. 1228 (8 U.S.C. [1934 ed.] 17),[1] provided in its first paragraph:

> Any American citizen shall be deemed to have expatriated himself when he has been

[1] Repealed by Section 504 of the Nationality Act of 1940, which became effective January 13, 1941, 54 Stat. 1172, 1174 (8 U.S.C. 904, 906).

naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state.

Sections 401, 403, 104, 504, and 347 of the Nationality Act of October 14, 1940, 54 Stat. 1138, 1168-1170, 1172, 1168 (effective January 13, 1941, § 601, 54 Stat. 1174, 1172), provide in relevant part:

> Sec. 401 [8 U.S.C. 801]. A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
>
> (a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person: * * *; or
>
> (b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state;
>
> * * *
>
> Sec. 403 (as amended [58 Stat. 677]) [8 U.S.C. 803]. (a) Except as provided for in subsections (g), (h) and (i) of section 401, no national can expatriate himself, or be expatriated, under this section[2] while within the

[2] The words "this section" as used in section 403 refer to section 401. *Savorgnan* v. *United States*, 338 U.S. 491, 493, fn. 2.

United States or any of its outlying possessions, but expatriation shall result from the performance within the United States or any of its outlying possessions of any of the acts or the fulfillment of any of the conditions specified in this section[2a] if and when the national thereafter takes up a residence abroad.

Sec. 104 [8 U.S.C. 504]. For the purposes of section[s] * * * 403 [8 U.S.C. 803] * * * of this Act, the place of general abode shall be deemed the place of residence.

Section 504 [8 U.S.C. 904]:

The following Acts or parts of Acts are hereby repealed;

* * *

And any other Acts or parts of Acts in conflict with the provisions of this Act, except for the purposes of section 346 of this Act.

The repeal herein provided shall not terminate nationality heretofore lawfully acquired, nor restore nationality heretofore lost under any law of the United States or any treaty to which the United States may have been a party.

Section 347 [8 U.S.C. 747(a)]:

Nothing contained in * * * chapter V

[2a] See fn. 2, *supra*.

of this Act [which includes section 504], unless otherwise provided therein, shall be construed * * * to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any act, thing, or matter, civil or criminal, done or existing, at the time this shall take effect; but as to all such prosecutions, suits, actions, proceedings, acts, things, or matters, the statutes or parts of statutes repealed by this Act, are hereby continued in force and effect.

* * *

STATEMENT

On July 14, 1947, petitioner filed in the District Court for the Southern District of New York a complaint (R. 1), as amended on January 7, 1948 (R. 5-10), praying for a judgment declaring her to be a citizen of the United States.[3] After a hearing, the trial court specifically found, *inter alia*,

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[3] Petitioner commenced her action for declaratory judgment following a refusal by the United States Trust Company of New York to recognize her partial revocation of a trust for her benefit, on the ground that she was powerless to do so under the terms of such trust, since she was "a citizen and national of Italy" (R. 1, 6, 58). The Trust Company was named as a defendant because it is acting as trustee of the trust, "the correct administration of which may depend on her citizenship status" (R. 18).

On September 23, 1947, petitioner applied to the United States Department of State for a passport, which was denied on the ground that she was not a citizen of the United States (R. 6, 30-31; Gov. Exs. B, C; R. 32, 93, 99-100).

that on February 14, 1939, petitioner, while a citizen of the United States, had taken "an oath of allegiance to the King of Italy," following which she had "lived in various places outside the United States," and the court concluded that she had "expatriated herself under the laws of the United States by her naturalization as an Italian citizen" and "by taking an oath of allegiance to the Kingdom of Italy, followed by her residence abroad from 1939 to 1946" (R. 129-130). Judgment was entered dismissing the complaint "on the merits" (R. 132). On appeal, the Court of Appeals affirmed the judgment (R. 145).

The evidence adduced at the hearing in the District Court may be summarized as follows:

Petitioner, whose parents were native American citizens, was born in New York City on April 20, 1901 (R. 27, 128; Pet. Ex. 1; R. 27, 81-82). She resided continuously in the United States until 1939 (R. 53). Her formal education, until she was 18 years of age, consisted of private tutoring and schooling, which was above high school level (R. 48-49).

In 1935, she became engaged to marry one Count Giovanni Revedin, an Italian citizen, who was a career member of the Italian Diplomatic Service (R. 32-33, 34, 128). Under Italian law, in effect at that time, diplomatic officials could not obtain the requisite "royal consent" to marry if they contemplated marriage to "a person not in possession of Italian citizenship" (Pet. Ex. 2;

R. 82, 61-62, 35, 128).[4] After being apprised of this requirement of Italian law, petitioner "refused to go to Italy" to acquire new citizenship lest she "lose or endanger" her American citizenship (R. 50-51, 34, 35, 39, 42). Petitioner deferred her marriage, pending her intended husband's assiduous efforts to discover a method whereby she could satisfy the requirement of Italian citizenship without jeopardizing her native citizenship (R. 35, 39, 94).[5]

In 1938, her fiance assured petitioner that he had found a method whereby petitioner "might acquire Italian citizenship under Italian law adequate to permit the marriage in a way that would not result in loss of" her American citizenship (R. 34, 35-36, 53-54; Gov. Ex. B; R. 32, 94). The plan, among other things, required that petitioner sign a document to be transmitted to her from Italy by her prospective father-in-law (R. 34, 35-36). Petitioner had made no inquiry, directly or indirectly, either in the United States Department of State or any other agency of the United

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[4] The law was repealed in 1944 (R. 62; Pet. Ex. 3; R. 63, 83).

[5] On February 1, 1938, in contemplation of her marriage to Count Revedin, petitioner established a trust fund with the United States Trust Company of New York in order to protect her property from possible confiscation in the future by the Italian government (R. 51-52, 59). The trust agreement, which named petitioner's brother as the trustee, provided that it could not be modified, altered or revoked without the trustee's consent, unless petitioner were a citizen of the United States (R. 52). On February 8, 1939, the trust indenture was modified, naming petitioner's sister as an additional trustee (R. 58-59).

States concerning the possible legal effect that the proposed plan might have on her American citizenship (R. 40-41). Relying solely upon her fiance's assurance, petitioner agreed to participate in his plan (R. 39, 41-42).

Accordingly, in December 1938, she signed a document, which was a petition, printed in Italian, requesting the Ministry of the Interior, at Rome, "to grant her Italian citizenship" in accordance with Italian law, "in view of the fact that she has to contract marriage with an Italian in the Diplomatic Service" (Gov. Ex. D; R. 37, 101-103, 36, 39, 128). She was ignorant of its contents because she could not read or write Italian (R. 37, 129).[6] She returned the executed document to her prospective father-in-law, who filed it on her behalf with the Ministry of the Interior at Rome (R. 36; Gov. Ex. D; R. 37, 102). On December 30, 1938, a royal decree was issued granting "Italian citizenship" to petitioner "subject to compliance with the conditions and formalities provided by" law, which, *inter alia*, required the grantee to take an "oath of allegiance to the King" and to "swear to observe the statute and other laws of the State" (Gov. Exs. F, B; R. 51, 106-108, 32, 95-96; Pet. Exs. 4, 5, R. 63, 64, 84, 85-86, 129).

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[6] Petitioner admitted that she had studied Latin and "had two years of Italian" while attending school (R. 49, 38, 55). The trial court found that at the time petitioner signed the document she "could neither speak nor read the Italian language" (R. 129, 54).

Shortly thereafter, Count Revedin arrived in New York, from his diplomatic post in Hungary, in order to wed petitioner (R. 39, 36). On February 14, 1939, in furtherance of her fiance's plan, petitioner voluntarily accompanied her intended spouse to the Italian Consulate in New York in order to go through a "very irregular procedure," which, he assured her, technically "would comply with the Italian law for diplomats," but, because of its irregularity, would not affect petitioner's United States citizenship (R. 39, 35, 41-42, 50, 53-54, 77). After being informed by the officials at the consulate that she would have to "take an oath to the King of Italy," petitioner, without any intention of renouncing her native citizenship, participated in a proceeding wherein she "assumed" she took the requisite "oath," which was administered to her in Italian (Gov. Ex. B; R. 32, 94-95; 42, 45-46, 50, 129).[7] As part of the proceedings, she signed an instrument written in Italian which recited that petitioner "having taken cognizance of the Royal Decree of December 30, 1938, * * * by virtue of which Italian citizenship has been granted to" her, an "oath" in "lawful form"

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[7] Translated, the oath was as follows: "I swear to be faithful to the King of Italy, Emperor of Ethiopia, and to observe the customs and laws of this State" (Gov. Ex. E; R. 43, 105).

In an affidavit, dated September 23, 1947, petitioner stated that although she did not recall doing so it was possible that she had repeated some Italian words during the proceedings on February 14, 1939, but that if she did so the words had no meaning to her (Gov. Ex. B; R. 32, 95).

was administered to her, at her request, "after she was warned on the moral and religious importance" thereof (Gov. Exs. E, B; R. 43, 104-105; 42, 44, 54, 32, 96).[8] At the time of this proceeding petitioner "could neither speak nor read the Italian language" (R. 129, 79). Neither her fiance, who spoke and read English perfectly and counseled her participation in the proceedings, nor any of the consular officials had translated or explained the instrument she had signed or the words which were spoken to her in the course of the proceeding (R. 42, 44, 54, 55, 77, 79-80, 95).

On February 20, 1939, petitioner married Count Revedin in New York City (R. 32-33, 46, 93, 97). On February 24, 1939, they left New York in order to take up residence in Budapest, Hungary, where the Count was stationed at a diplomatic post (R. 46, 47, 55, 129).[9] Since that time, which included a period of internment by the Nazis during 1943

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[8] The facts described in the instrument and petitioner's signature thereto were attested by the signatures of the Consul and his two associates (R. 77, 78, 79; Gov. Ex. E; R. 43, 104, 105).

[9] In her complaint filed in the trial court in the instant case, petitioner, without alleging it affirmatively, stated by way of information, that, "Shortly before her departure from this country on February 24, 1939," on the advice of her brother, who believed that, because of her participation in the proceedings at the Italian consulate, "some question might be raised by the Treasury Department of the United States" as to her citizenship, she had "instructed" the United States Trust Company of New York "to thereafter file non-resident alien tax returns on her income" (R. 8).

and 1944, petitioner lived with her husband at various diplomatic posts abroad, except for several months in 1946, when she returned to New York for hospitalization (R. 47, 55-58, 59, 129). Petitioner denied that she had ever intended to establish a permanent residence abroad (R. 59).[10]

At the hearing in the District Court, an expert in Italian law testified on behalf of petitioner to the effect that, in his opinion, petitioner could not have acquired Italian citizenship solely by the issuance of the royal decree of December 30, 1938, because, under Italian law, such a decree could "have no effect if the person to whom the citizenship is granted does not take vocal allegiance to the King and does not swear to observe the statutes and other laws of the state" (R. 61, 64-65; Pet. Exs. 4, 5; R. 63, 84, 64, 85). He testified further that, in his opinion, in order to take a valid oath under Italian law, the affiant, after being admonished by the officer administering the oath of "the moral and religious importance" thereof, must "read or repeat" verbatim "the text" of the prescribed oath, rather than merely give assent to the

[10] At the time of the trial, petitioner was maintaining her residence in Tokyo, Japan, where her husband was stationed as Italy's representative (R. 47, 48, 59). She admitted that she had no plans as to where she would establish her permanent residence in the future, when her "husband's association with the Italian Diplomatic Service should come to an end" (R. 59). Her sojourns abroad were not on United States passports. The last United States passport had been issued to her on November 26, 1937 (Gov. Ex. B; R. 32, 93).

form of the oath read to him by such officer (R. 65-67, 69, 71; Pet. Exs. 6, 7, 8, R. 68, 87-89, 69, 90, 70, 91-92). He also testified that, if the affiant is not conversant with the language in which the oath is administered, an interpreter should be present to explain the proceedings (R. 71-72, 76; Pet. Ex. 8, R. 70, 91-92).

After reviewing the entire evidence the trial judge stated: "I can only conclude that Mrs. Revedin knew that she was applying for and obtaining Italian citizenship and taking an oath to the King of Italy. I assume that she thought it was only a technical matter and that it would not affect her American citizenship. In this latter she was wrong and wrongly advised as the United States Supreme Court has said" (R. 120).

ARGUMENT

Petitioner does not claim that, if, as a result of her participation in the activities at the Italian consulate, she acquired Italian citizenship, she would not thereby have expatriated herself under the ruling in *Savorgnan* v. *United States,* 338 U.S. 491.[10a] In that case, this Court held that, regardless of Savorgnan's intent not to renounce her American citizenship, her acquisition of foreign citizenship in 1940, coupled with her subsequent residence abroad from 1941 to 1945, resulted in her expatriation under section 2 of the Citizenship Act

[10a] Petitioner's counsel filed a brief *amicus curiae* in the *Savorgnan* case. 338 U.S. at 492.

of 1907, and sections 401, 403 and 104 of its successor, the Nationality Act of 1940, both of which acts were deemed to lead to the same conclusion (338 U.S. 497, 503, 504, 506).[11] Petitioner claims (Pet. 3) that there is a "fundamental" distinction between the *Savorgnan* case and the instant case, in that, in the former, the expatriate admitted that she had acquired Italian citizenship, whereas in this case such fact, according to petitioner, was not admitted by her or proved by respondent. She claims (Pet. 3-12) that the oath which she took was void because of irregularity in its administration and that as a result she never acquired Italian nationality.

We submit that the evidence amply supports the trial court's finding that petitioner expatriated

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[11] The Act of 1907 was continued by a saving clause (section 347(a)) in the Act of 1940 (54 Stat. 1168, 8 U.S.C. 747(a)), which became effective January 13, 1941 (54 Stat. 1172, 1174, 8 U.S.C. 904, 906). Unlike a provision of the 1907 Act, the 1940 Act makes expatriation contingent upon the taking up of residence abroad following one's acquisition of foreign nationality. Petitioner, following her participation in the proceedings at the consulate, left the United States for residence abroad in 1939, before the effective date of the Nationality Act. But her foreign residence continued until 1946, when she returned to the United States only to leave again in 1947 for residence abroad. We submit that petitioner came within the purview of the expatriation provisions of the 1940 Act not only because of her continued residence abroad after 1941, but also as a result of her departure for a foreign residence in 1947. Cf. *Savorgnan* v. *United States*, 338 U.S. 491, 504; *Perkins* v. *Elg*, 307 U.S. 325, 329. Thus, there is no substance to petitioner's "view" (Pet. 4, fn. 1) that the 1907 Act alone "is applicable in the instant case."

herself because of her voluntary performance of two statutory acts, namely, (a) her acquisition of Italian citizenship, and (b) her "oath" or "formal declaration of allegiance" to the King of Italy. Either one of these acts, independently, was sufficient to effect expatriation. Thus, if the evidence sufficiently establishes either of these acts, the judgment of the trial court should remain undisturbed.

(a) *Petitioner acquired Italian citizenship.*— Section 2 of the 1907 Act provides for the expatriation of an American citizen who "has been naturalized in any foreign state in conformity with its laws"; and section 401(a) of the 1940 Act provides for the loss of United States nationality by a person "Obtaining naturalization in a foreign state * * * upon his own application." It is our contention that the evidence, tested under either of the two statutes, shows that petitioner acquired Italian naturalization. The evidence is clear that petitioner, knowing that her fiance could not receive official sanction for their contemplated marriage unless she became an Italian citizen, applied for and received a "royal decree," granting her Italian citizenship on condition that she subsequently take an "oath of allegiance to the King" and "swear to observe" the laws of Italy. In order to comply "with the conditions and formalities" required, petitioner voluntarily participated in a proceeding at the Italian Consulate, where, being advised that she was required to

"take an oath to the King of Italy," she raised her right hand, and took what she "assumed" to be the requisite oath, admitting that it was "possible" that she might have repeated words in Italian, which had no meaning to her, uttered by the official. Petitioner, together with the consul and his two associates, then subscribed the minutes of the proceeding, which minutes stated that she had sworn, in "lawful form," "to be faithful to the King of Italy, Emperor of Ethiopia, and to observe the customs and laws of this State." The official minutes of the consulate certify that petitioner affirmatively undertook certain acts to accept Italian citizenship and complied with the "conditions and formalities" stipulated in the royal decree granting her such citizenship.

In the absence of clear evidence to the contrary, there is a presumption of regularity with respect to the official acts of all public officers, including foreign officials. *United States* v. *King,* 3 How. 773, 785-786; *Sabin* v. *United States,* 44 F. 2d 70, 76 (Ct. Cl.) Thus, *prima facie,* petitioner acquired Italian naturalization in conformance with Italian law. There is no evidence that the Italian Government questioned the acts of the consular officials. Apparently, it was satisfied that the proceedings conformed with Italian law, for it permitted petitioner's husband to remain in its diplomatic service after their marriage, and evidently allowed petitioner to travel abroad on its passport,

since she had not been issued any United States passport after her marriage. Manifestly, petitioner accepted some privileges flowing from such citizenship. Cf. 3 Hackworth, *Digest of International Law*, p. 211 (1942). Thus, petitioner's contention (Pet. 5-6, 7-11) to the effect that, because of her inability to understand or read Italian, the proceeding at the consulate was irregular under Italian law, and consequently did not constitute a "valid oath for the purpose of acquisition of foreign nationality," is without substance. There was no evidence that petitioner's naturalization was void.[12] Whatever the legal effect of petitioner's oath under Italian law, she nevertheless, for all intents and purposes, acquired a citizenship which on its face is valid, as the Italian Government evidently continues to recognize it. There was no evidence that either the Italian Government or petitioner ever sought

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[12] The expert in Italian law testified only as to the characteristics requisite to constitute a valid oath under Italian law. He did not testify that petitioner had not received Italian citizenship. Previously, he had stated in an affidavit that there was merely a "serious doubt" whether she had acquired such citizenship. (Gov. Ex. B., R. 32, 96.)

The record does not support petitioner's summary (Pet. 3, 8) of the expert witness' testimony to the extent of her claim that such testimony "established that what she did at the Italian Consulate was *not* sufficient as a matter of Italian law to constitute the oath necessary to accord her Italian nationality, but was a nullity, and that she therefore did not thereby acquire such nationality or any other status under the Italian law." (Cf. R. 61-77).

or obtained a cancellation or revocation of her Italian citizenship. If such citizenship is subject to collateral attack under Italian law, still it is inconsistent with the principle of comity between nations and outside the province of our courts to revoke the grant of another sovereign. Cf. *United States* v. *King*, 3 How. 773, 785-786.[13] The royal decree granting her citizenship, which was duly recorded and the validity of which petitioner does not question, and the minutes of the consulate recording her compliance with the conditions of the decree, constitute legal documents, all of which are regular on their face.

Thus, petitioner's Italian naturalization was acquired "in conformity with" Italian law, within the purview of section 2 of the Citizenship Act of 1907. Cf. *United States ex rel. Rojak v. Marshall*, 34 F. 2d 219, 220 (W.D. Pa.). Even more clearly, it was such "naturalization" as fulfills the stated factual conditions of section 401(a) of the Nationality Act of 1940, which, unlike its predecessor statute, does not require that the

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[13] The implication that the naturalization was susceptible to revocation, because the bad faith of petitioner in taking a perfunctory oath without intending allegiance to the King of Italy or forswearing allegiance to the United States, coupled with the suggested disloyalty of the consular officials in accepting such an oath, tainted it with fraud, is not germane to the issue involved herein. The relevant issue is whether petitioner knowingly applied for and received Italian citizenship which was prima facie valid. Cf. *United States* v. *King*, 3 How. 773.

"naturalization in a foreign state" be "in conformity with its laws."

(b) *Petitioner took "an oath of allegiance" to the King of Italy.*—As an additional ground for expatriation, section 2 of the 1907 act includes the act of taking "an oath of allegiance to any foreign state"; and section 401(b) of the 1940 act includes "Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state." We submit that the evidence supports the trial court's finding that petitioner "took an oath of allegiance to the King of Italy." As we pointed out in subdivision (a), *supra,* petitioner voluntarily applied for and received a decree granting her Italian citizenship, and, in order to comply with the conditions subsequent stipulated therein, she voluntarily participated in a formal proceeding for the purpose of taking "an oath to the King of Italy." Petitioner may not have been interested in the proceeding "in any way, shape or manner" as she testified (Pet. 7), but she was interested in the result of that proceeding—which was to qualify her under Italian law for marriage to Count Revedin. It is highly improbable that petitioner, a competent adult, who knew that she had applied for Italian citizenship and that the instrument she was signing was connected with acquiring the new nationality, did not understand that she was swearing "to be faithful to the King of Italy, Emperor of Ethiopia." Although the

proceeding and the document which she signed were in Italian, which petitioner did not understand, her intended spouse, who understood both English and Italian, was present and could have explained them to her. Thus, as this Court stated in *Savorgnan* v. *United States,* 338 U.S. 491, 502, petitioner "was as responsible for understanding them as if they had been in English. * * * Whatever the legal consequences of those acts may be, she is bound by them."

Petitioner insists, however (Pet. 5-12), that the "oath of allegiance" referred to in the expatriation statutes must be such as would be valid "for the purpose of acquisition of foreign nationality"; and on the basis of her contention that the irregularity in the proceeding at the consulate, occasioned by petitioner's ignorance of Italian, rendered the oath invalid for the acquisition of Italian nationality, argues that the oath did not effect her expatriation. Assuming, *arguendo,* that there was some irregularity in the proceeding, there is no evidence, as we have pointed out in subdivision (a), *supra,* that the oath was rendered void. Irregularity in a proceeding does not necessarily vitiate it.

Furthermore, we submit that Congress did not intend that the "oath of allegiance," as an act of expatriation under the provisions of either the 1907 or 1940 acts, be such as would necessarily effect naturalization under the laws of the foreign

state. Obviously, Congress intended the "oath of allegiance" to be a separate ground for expatriation, independently of the acquisition of foreign naturalization. Cf. *Bauer* v. *Clark,* 161 F. 2d 397, 404 (C.A. 7). Otherwise, section 401(b) of the 1940 act and the provisions of section 2 of the 1907 act relating to such oaths would be superfluous, in view of the preceding provisions in each statute relating to foreign naturalization. Furthermore, although section 2 of the 1907 act requires that foreign naturalization be "in conformity with" the laws of the foreign state, it has no such requirement with respect to the "oath of allegiance." Section 401(b) of the 1940 act is also silent in this respect. It was in this connection that the court below held that "the requirement of a legally valid oath *for purposes of gaining citizenship* is not to be imported into the statutory provisions dealing with its loss. The statutory provision itself is not so qualified" (emphasis ours). (R. 143-144.) There is no implication in this statement, as petitioner fears, that any semblance of an oath of allegiance, no matter how informal or frivolous, could be considered as a ground for expatriation.

The court below recognized the oath taken by petitioner as having been "free of either compulsion or caprice" and surrounded by solemnity and formality, characteristics which, the court pointed out, were lacking in *In re Gogal,* 75 F. Supp. 268

(W.D. Pa.), and *Gillars* v. *United States,* 182 F. 2d 962 (C.A.D.C.), the cases which petitioner claims (Pet. 9-10), are in conflict with the instant decision.[14] The court in the *Gogal* case had found that an oath allegedly taken by petitioner therein at the time of his induction into a foreign army was void because he had been inducted into the army under "duress, force, fear and intimidation." In the *Gillars* case, a subscribed statement, purporting to be an oath of allegiance to Germany, when translated simply read: "I swear allegiance to Germany." The court there held that it did not effect expatriation since it was not sworn before anyone authorized to administer oaths, was informal in character, and "no connection whatever [was] shown between it and any regulation or procedure having to do with citizenship or attaching oneself to the Reich or to Hitler." (182 F. 2d at 983.)

In the instant case, there is ample evidence of petitioner's unequivocal act of assuming an obligation, after being told that she was required to "take an oath to the King of Italy," by raising her right hand in the presence of a person author-

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[14] Similarly, the decision below is not in conflict with the Board of Immigration Appeals decision in the case of *In the Matter of E* ———, 1 I. & N. Decisions 548, 550 (1943). In that case there was some evidence that petitioner merely signed an oath form, without taking the oath contained in the form, as was evidenced by "the failure of the attesting officer to sign the certificate attesting to the fact that he took the oath."

ized to administer oaths and signifying assent to the proceeding on advice of her intended husband. She followed this up by signing an instrument acknowledging that she had taken an oath to the King in "lawful form." That instrument in itself amounted to a "formal declaration of allegiance to a foreign state" within the meaning of section 401(b) of the 1940 act. Her mental reservation not to be bound by the proceeding, in which she claims to have participated as a matter of expediency, is irrelevant. Cf. *Doreau* v. *Marshall,* 170 F. 2d 721, 724 (C.A. 3). The statutory acts for expatriation are objective. *Savorgnan* v. *United States,* 338 U.S. 491, 497. As the court below stated, petitioner cannot now avoid the effect of the statutory provisions "merely because she did not intend to be bound by them or because she kept herself insulated from the significance of free and conscious acts for which she must be held responsible" (R. 145).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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Petitioner,

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Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The following comments concerning the government's brief in opposition to petitioner's application for a writ of certiorari in this matter are respectfully submitted.

I

As to the Government's Claim that Petitioner Did Acquire Italian Citizenship (pp. 14-18)

It is conceded that the paper work in connection with petitioner's alleged naturalization was regular on its face; and it is conceded that if what the government's Exhibit E[1] recited had taken place, had in fact taken place, petitioner would thereupon have acquired Italian nationality.

The fact is, however, that none of these things did take place; petitioner was given no warning of the religious and moral importance of her acts; to the best of her recollection, petitioner spoke no words; and no sworn interpreter was present for the administration of an oath. So petitioner testified, and the government failed to call any witness to contradict her.[2]

By like uncontradicted testimony, Luigi Dionisi, a member of the Italian bar, testified that, under the Italian law, these three omissions were fatal to the validity of the "oath"—that it was not voidable but a nullity.[3] (Pl. Ex. 6, Tr. p. 87; Pl. Ex. 7, Tr. p. 90)

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[1] The Italian document signed by petitioner at the Italian Consulate.

[2] The government was given a copy of its Exhibit E at petitioner's examination before trial which was held more than a year before the trial, and thus had ample opportunity to call the representatives of the Italian Consulate who subscribed this document to contradict the petitioner had it chosen to do so. Whether either of these men was questioned by the government, we do not know. We do know that neither of them was called on the trial, nor were any steps taken to take their depositions.

[3] Dionisi's previous statement referred to in footnote 12 of the government's brief that there was merely a "serious doubt" as to whether petitioner had acquired Italian citizenship, as appears in the affidavit in which it was made, was based on the assumption that what was stated in government's Exhibit E was true, and was thus in no wise inconsistent with his testimony on the trial.

The government now seeks to substitute for its lack of proof on these matters: (1) a presumption of regularity of acts of foreign officers; and (2) an inference from the fact that petitioner's husband was not expelled from the foreign service, that the Italian government must have waived the "irregularities".

In support of its first point, the presumption of regularity, the government cites as its sole authority a dictum of the Supreme Court (*United States* v. *King*, 3 How. 773)[4] in 1845 indicating the existence of such a rebuttable presumption (which the Court, in that case, found in fact rebutted) in the interest of protecting a citizen in his property rights. That presumption the government would now have this Court expand into a conclusive presumption rising above a native born citizen's sworn testimony for the purpose of expatriating her.

In support of its second point, the inference of fact, the government cites no authority but simply proceeds by conjecture, which conjecture even if it could be accepted as a substitute for proof, must fail when we consider, as pointed out by the government on page 17 of its brief, that the written record, presumably the only thing ever seen by the government in Rome, was regular on its face.

II

As to the Government's Claim that Petitioner Took an "Oath of Allegiance" to the King of Italy (pp. 18-22)

The only factual argument that the government makes on this point is as follows:

> "• • • It is highly improbable that petitioner, a competent adult, who knew that she had applied for Italian

[4] Sabin v. United States, 44 Fed. 2d 70 (Ct. Cl. 1930), the only other case cited on this point, relates to a United States officer and not a foreign official.

> citizenship and that the instrument she was signing was connected with acquiring the new nationality, *did not understand that she was swearing* 'to be faithful to the King of Italy, Emperor of Ethiopia' " (p. 18). (Emphasis ours.)

In that one sentence, it is submitted, lies the fallacy of the government's position for, while plaintiff has testified that, in holding up her right hand, she assumed she was *supposed* to be taking an oath, the point is that for one *in fact* to take a valid oath, as indicated above, far more than the simple raising of a hand is required.

The government's principal argument on this point is a legal one—that because the prescribed "oath of allegiance" was not expressly defined as having to be "in conformity with" the laws of the foreign state, no such requirement of legal validity could be imported into the statute.[5]

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[5] In addition, the government continues to rely on the 1940 Act, and the consequence that, even though what petitioner did fell short of being the "oath" proscribed by the 1907 Act, it was at least the "formal declaration" proscribed by the 1940 Act, but not mentioned in the 1907 Act. The answer to this argument is: (1) that the 1940 Act was not passed until well over a year after the acts here relied on had taken place; (2) that no statute will be given retroactive application unless such purpose plainly appears on its face (see **U. S. v. Magnolia Petroleum Co.**, 276 U. S. 160 (1928); **Brewster v. Gage**, 280 U. S. 327 (1930); **Claridge Apartments Co. v. Commissioner**, 323 U. S. 141, 164 (1944); and (3) that here the statute expressly indicated no retroactive effect. Section 347(a) of the Nationality Act of 1940 (8 U. S. C. A. 747(a)) provides that:

> "Nothing contained in * * * this chapter, unless otherwise provided therein, shall be construed to affect * * * any act, * * * done * * *, at the time this chapter shall take effect; but as to all such * * * acts * * * the statutes * * * repealed by this chapter, are hereby continued in force and effect."

cf. **Petro v. McGrath**, 188 F. 2d 978 (D. C. Cir. 1950).

But if the government's contention that an American citizen can thus be expatriated by **ex post facto** legislation is taken at all seriously, this, too, it is respectfully submitted, is a question needing review by this Court.

We believe that in this argument the government is wrong. It is our view that the legislature used the word "oath" in a legal rather than in a factual sense—as an act with some legal consequence; an act effectual to accomplish the result for which it was performed.

But be all this as it may, and assuming that the government's contention is correct in so far as legislative intent is concerned, that is that the statute was intended to proscribe acts or words falling short of legally valid oaths, the government in its brief fails to discuss at all the one point which we believe, above all others, requires review by this Court; that is, whether the statute, as so construed, would be valid, effectual and constitutional.

It is respectfully submitted that the petition for a writ of certiorari herein should be granted.

Dated, July 29, 1952.

Respectfully submitted,

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